

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ADDINGTON STEWART, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. 4:04CV00885 RWS
)	
CITY OF ST. LOUIS,)	
)	
Defendant.)	

**MEMORANDUM IN SUPPORT OF DEFENDANT CITY OF ST LOUIS' MOTION TO
DISMISS COUNT II OF PLAINTIFFS' FIRST AMENDED COMPLAINT**

I.
BACKGROUND

The Plaintiffs have filed a First Amended Complaint against the City of St. Louis ("City"). Count I is brought pursuant to Title VII and Count II is brought pursuant 42 U.S.C. §1981. The claims arise from promotional examinations that were administered by the City in 2000 and 2004 for the positions of Fire Captain and Fire Battalion Chief

II.
LEGAL ARGUMENT

42 U.S.C. § 1981 does not provide a separate cause of action against a local government entity. Jett v. Dallas Indep. School Dist., 491 U.S. 701, 731 (1989).

Although §1981 was amended after the Jett decision by adding subsection (c), this amendment did not create a remedial cause of action against local government entities. Oden v. Oktibbeha County, 246 F.3rd 458, 462 (5th Cir. 2001).

A claim against a government entity for the violation of §1981 must be brought under 42 U.S.C. § 1983. Jett, at 735 (§1983 provides the exclusive federal damage remedy for the violation of rights guaranteed by § 1981 when the claim is pressed is pressed against a state

actor); Lockridge v. Bd. of Trustee of Univ. of Arkansas, 315 F.3rd 1005, 1007 (8th Cir. 2003);
Artis v. Francis Howell North Band Booster Ass'n., 161 F.3rd 1178, 1181(8th Cir. 1998).

The Plaintiffs have not asserted a claim under 42 U.S.C. § 1983 nor invoked the Court's jurisdiction under this statute. This Court, therefore, has no jurisdiction to hear the Plaintiffs' claim for violation of §1981 as set out in Count II of their First Amended Complaint.

III. CONCLUSION

For the foregoing reasons, Count II of the Plaintiffs' First Amended Complaint should be dismissed.

Respectfully Submitted,

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Certificate of Service

I hereby certify that on this 8th day of March, 2006, a copy of the foregoing copy of was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Althea P. Johns
Jerry Diekemper
Judith A. Ronzio

/s/Nancy R. Kistler